

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON FEDERAL RELATIONS, ENERGY, AND TELECOMMUNICATIONS

Call to Order: By **CHAIRMAN AUBYN A. CURTISS**, on March 27, 2001
at 3:10 P.M., in Room 137B Capitol.

ROLL CALL

Members Present:

Rep. Aubyn A. Curtiss, Chairman (R)
Rep. Tom Dell, Vice Chairman (D)
Rep. Douglas Mood, Vice Chairman (R)
Rep. Dee Brown (R)
Rep. Roy Brown (R)
Rep. Stanley Fisher (R)
Rep. Gary Forrester (D)
Rep. Carol C. Juneau (D)
Rep. Gary Matthews (D)
Rep. Joe McKenney (R)
Rep. Alan Olson (R)
Rep. Trudi Schmidt (D)
Rep. Bob Story (R)

Members Excused: None.

Members Absent: None.

Staff Present: Stephen Maly, Legislative Branch
Nina S. Roatch, Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SJ 14, 3/22/2001
Executive Action: SB 243

EXECUTIVE ACTION ON SJ 14

HEARING ON SJ 14

Sponsor: SENATOR EVE FRANKLIN, SD 21, Cascade County

Proponents: Larry Longfellow, VFW
Roger A. Hagan, National Guard Associations

Opponents: None

Informational: Lindi K. Gerard, Libby
Lydia Mysse, Libby

Opening Statement by Sponsor:

SENATOR EVE FRANKLIN, SD 21, Cascade County, said that the legislation comes because she believes that it will make the world a better place to live. It would re-institute the concept of public service for all of our citizens and it would be a positive move in our culture. She would see it as taking the place of the military draft or a community based service operation. She believes that her experience as a legislator and as a citizen have taken her musing to this idea that there are only a few things that a person is compelled to do in this society. You have to pay your taxes. You have to obey a few laws. Otherwise, if you keep you head down and stay out of trouble, a person may not have much investment in how the society functions. People who have a higher calling understand that they are part of the world and it is an important notion. It is a concept that society drifts away from. Her father once told her that it was a mistake to discontinue the draft. His notion was: How can you have an active responsible citizen's military if you don't have the investment of every single individual in what the policies of our country are? That seed has remained with her for about 40 years. Some of the changes that she sees in our culture have led her to this bill and hearing. She believes strongly that the stability and quality of our society is dependent on full participation. The concept of society, not only should have value, but also should expect that all citizens serve the larger calls of democracy through protection of our domestic interests in the military or through development of our domestic interests through other points of public service. The resolution bears some discussion.

Proponents' Testimony:

Roger Hagan, National Guard Associations, said his associations believe the concept is very important. It is a wonderful statement for the citizens of Montana to make to our Congress. They believe that some form of conscription is going to serve a great purpose in our social values in our country, as well as, give the children of our country an opportunity to learn great skills. It doesn't necessarily have to be military service as the resolution states. From a perspective of military service, they see it helping them as far as recruiting needs and also for the youth to have an opportunity to learn some discipline and respect for authority, as well as to get a good education. They recently conducted a survey for the National Guard Scholarship recipients, those people who have enlisted in the Montana National Guard and who are now using a state sponsored scholarship, and asked them to rank from one to eleven the different reasons that they belong to the military. Service to country did rise to the top, fairly high to the top. They were encouraged by that. The number one reason of the top four of the top ten reasons to belong was education. That was expected. Sixty-three percent said that it was service to their country.

Larry Longellow, VFW, said that his membership supports **SJ 14.** They would appreciate the committee's support of it also.

Opponents' Testimony: None

Questions from Committee Members and Responses:

REPRESENTATIVE OLSON thanked the Senator for presenting the resolution.

Closing by Sponsor:

SENATOR FRANKLIN thanked the committee for the time, especially in the late part of the session. She believes strongly in the concept of the resolution.

EXECUTIVE ACTION ON SB 243

Motion: REP. ROY BROWN moved that SB 243 BE CONCURRED IN.

Discussion:

The **CHAIR** said there are amendments. They were handed out.

Motion: REP. ROY BROWN moved that **AMENDMENTS TO SB 243, SB024314.ATE BE ADOPTED. EXHIBIT(feh69a01)**

Discussion:

REPRESENTATIVE ROY BROWN discussed the purpose of the amendments. He said they bring the bill back to its original form and it shortens the period from 2007 to 2005. He asked that **Stephen Maly** be allowed to explain the amendments.

Stephen Maly went through the bill with the amendments. The amendments put the bill back to a leaner version than it started as. The net affect is three fold. The transition period ends in 2005 instead of the current status which ends in 2004. He has changed current law to strengthen, depending on your point of view, the education requirements that the default supplier currently has to educate its customers. That is new language and not removed under his amendments and was a genuine change in law when **SENATOR ROYAL JOHNSON** started. There is a clarification of what some people interpret to be in present law and others do not. It asserts that the distribution services provider has an ongoing regulated default supply obligation beyond the end of the transition period.

The **CHAIR** asked which customers would be educated? Are they residential or industrial customers. **Stephen Maly** said it meant all customers.

REPRESENTATIVE SCHMIDT asked if the amendments put the coops in the same position as a public utility? **Stephen Maly** replied yes, with respect to their obligation to act as a default supplier and to provide an emergency supply of electricity. It lumps them together. Cooperative utilities have these obligations already but they are not articulated in just this fashion in current law. This binds them together in a way that is not favored by coops.

REPRESENTATIVE OLSON said that when the committee is done working on the current amendments, he has an amendment that takes the coops out of this situation. Coops are not a regulated utility,

by The Public Service Commission. They supply their own oversight through their membership and he believes they do not belong in their bill.

REPRESENTATIVE STORY asked **Stephen Maly** about page 3 of the amendments where it talks about emergency distribution services and sub d says, "an emergency supplier of electricity and related services for customers who have an electricity supplier other than the default supplier." Since this is an ongoing situation, would that require this public utility to pick up those people who will have left the present system if their supply disappears? Is that what the amendment does? **Stephen Maly** replied yes.

REPRESENTATIVE STORY asked when you go into sub 2 and it talks about how that works, the PSC sets a rate and the market rate is the highest published rate for electricity purchased within the local load control area at the time of distribution. Does that mean that whoever was the default supplier would end up paying the highest peak power out there, for example if because of the way the system works and at some peak period of time during the day the distribution company had to go out on the stock market and buy some power for \$1500 a megawatt, just for a sliver of it, would that be the driving force of the price that a person would be paying? **Stephen Maly** said he believes that is current law.

REPRESENTATIVE STORY said that he understands it is current law being applied to a different situation than the state is applying it to now. **Stephen Maly** answered yes.

REPRESENTATIVE DELL also had a question for **Mr. Maly**. Do these amendments take the market based bidding process out of **SB 243**? **Stephen Maly** said yes. **REPRESENTATIVE DELL** asked if this is no longer the vehicle for going out to negotiate? **Stephen Maly** said he is correct. With these amendments, the committee is looking at current law with some modifications remaining, but none that transformed the process at the PSC which it undertakes now.

REPRESENTATIVE DELL said that is important. With these amendments, did **SENATOR JOHNSON** strip all of that out of the bill? **Stephen Maly** said as far as legislatively determined market strategy, that's the case. What has occurred subsequent to the initial drafting of this bill is that the PSC and Montana Power have exercised what they interpret to be their existing powers to do the very same thing. Prior to the drafting of this bill, **SENATOR JOHNSON** did not have confidence that was the case in law or definitely not the case in practice. Between then and now, the PSC and Montana Power have acted in a way that suggests that seeking prices in the market through a default supply is something they can do under current law. **REPRESENTATIVE DELL** said legislatively this was the legislature's attempt to try the market approach in negotiations through the legislative process.

By getting rid of it, we're shifting that authority to the PSC through a variety of different bills and unless there is another bill that does that, the legislature would be looking at other vehicles, but they would all be PSC driven? **Stephen Maly** said yes. It leaves the Public Service Commission practice in place and legislatively sets up new criteria that they must use if the bill is passed. There has been alteration of the status quo in **REPRESENTATIVE MOOD**'s bill with respect to how the PSC makes determinations about crisis.

REPRESENTATIVE STORY is still looking at the amendment on page 3. He believes the important thing the amendment does is it makes the distribution company, whoever they are or where ever they are, the default supplier for the customers. We are assuming that there is only one distribution company and that may be the case right now. He is not sure that will always be true. Under this statute if you had two distribution companies, would they be the default suppliers for their own customers or how do you interpret that would work? **Stephen Maly** said the key thing is that in the definition of public utilities in the bill there is no other public utility that fits the definition. The assumption was made earlier on that Montana Power Company was the public utility referred to in law in **SB 390**, although there were others then before PacifiCorp sold out and MDU doesn't count in the sense that they are outside the box. While it was assumed that **SB 390** pointed toward Montana Power Company as the public utility that would be the default supplier, this makes it more than clear, that is the case. He doesn't believe there are any other entities that fit into this scenario at present and how they would in the future, given the definition of a public utility. **REPRESENTATIVE STORY** asked **Stephen Maly**, prior to passing the bill that allowed Flathead Electric to consolidate with their subsidiaries, is that subsidiary a public utility until they consolidate? **Stephen Maly** said yes they are the default supplier in that territory, he would surmise.

REPRESENTATIVE DELL said it is his understanding that **SENATOR JOHNSON**'s idea was to bring the bill back to its original form and tear out some of the wording that didn't make a lot of sense and make it a process whereby for this period of time up through 2005, we could go off in the market and purchase a block of electricity for a known price for that period of time so that customers around the state could know what they are going to have to pay. If that is not what these amendments do, he would like to know what they are doing. Is that possible with the bill the way it is being amended? **Stephen Maly** said there is no portfolio formula in the bill anymore. It is back to where you are at present with PSC and the default supplier exercising

responsibility and powers under current law. That is what **SENATOR JOHNSON** has asked the committee to do to his bill with these amendments.

REPRESENTATIVE JOE BROWN asked where in the bill, as amended, in the stricken language does it talk about the portfolio? **Stephen Maly** said he believes it is in the sections that have been stricken altogether. The stricken language on page 7, 8, and 9 is all about the portfolio and page 7 is where **SENATOR JOHNSON's** original plans are laid out underneath the strike lines.

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REPRESENTATIVE DEE BROWN said if the committee is not going to look at a portfolio of prices and they are going to lock themselves in for a period of time, she isn't sure that is what they want to do. Today at caucus they heard the speaker talk about possible new generation even before this deadline is up. She is not going to be in support of these amendments to change it back.

REPRESENTATIVE MATTHEWS said he thinks this is a bill that all have been following and he would like to commend **SENATOR JOHNSON** because he had the foresight a long time ago to see the train wreck. He wanted to do something about it. Everyone sat and listened to the expert from The Cambridge Energy Research Association and he was saying now is the worst time to buy power and he thinks the Senator is frustrated. Where are the prices that are suppose to be coming out on the RFP? He hasn't heard where they are. He believes they have to be worried about the cost recovery for the default supplier. The gentleman from Cambridge said no one wants to be a default supplier in California.

Motion/Vote: REP. DEE BROWN moved that **AMENDMENTS SB024314.ATE TO SB 243 BE ADOPTED. Motion failed 4-8 with Roy Brown, Forrester, Juneau, and McKenney voting aye.**

Motion: REP. OLSON moved that **AMENDMENTS SB024304.ASM TO SB 243 BE ADOPTED. EXHIBIT(feh69a02)**

Discussion:

REPRESENTATIVE OLSON said that **SB 243** was not drawn up to apply to Montana electric coops. They are basically self-regulated entities through their boards and their membership. All the electric coops have contracts already in place for use of customers. In essence the default supply has already been taken care of for the consumers of electrical cooperatives. That, in his mind, makes the provisions of **SB 243** unnecessary.

REPRESENTATIVE DEE BROWN said she has to ask **Stephen Maly** if in the committee's passing of **SENATOR DE PRATU's** bill out of this committee and looking at coops in a different way from what they have ever looked at as a coop, is this going to change that?

Stephen Maly said without **SENATOR JOHNSON's** amendments what it does is keeps things the way they are in law with the coops and its duties to educate. In the second case the amendments leave the law alone on page 11. The wishes of **REPRESENTATIVE OLSON** and the coops is that the section only apply to a public utility as it does now and not bring the coops in because the coops already have statutory obligations in part of **SB 390**.

REPRESENTATIVE FORRESTER asked **Stephen Maly**, will the action the committee has taken dealing with Flathead Electric allowing ENI to merge with them actually lower the tax rate of those customers served now by ENI? Coops will now pay a 3% coop rate rather than the 6% rate, is that correct? **Stephen May** said that he believes so. Currently the coop in that area is paying taxes at the rate they would have paid had they remained a private industrial utility. It is that other bill that the committee has not seen yet that would require, in those instances where there is a merger, that the tax rate remains the same as it is for industrial utilities.

REPRESENTATIVE STORY said it is his understanding that actually the tax rate on the acquired property is the same as it is on the coop property but the coop pays through a contract to the local governments the difference. It was talked about in the hearing. They have an agreement or memorandum of understanding that they will provide that revenue to the local governments that would have been paid. It is not in the tax rate, it is a voluntary agreement.

REPRESENTATIVE ROY BROWN said he had a hypothetical question for **REPRESENTATIVE OLSON**. He knows a lot of coops have contracts that are for a certain period of time and some of them are expiring in the not too distant future. If a plan is developed that will have a portfolio of rates that are good for people that are outside of the coops and the coop's contract expires when the market prices are very high, are they going to be coming back

saying they would like to get into the system? **REPRESENTATIVE OLSON** deferred the question to **Gary Weins**. **Gary Weins** said no, they would not be coming back to the legislature to get on a different program. They have their own contracts, even when they expire, they have plans to go to other suppliers or continue with their existing suppliers. They will not be coming back to the legislature.

REPRESENTATIVE FORRESTER asked **REPRESENTATIVE STORY** a question. The committee heard a bill the other day by **REPRESENTATIVE GOLIE** to allow for significant tax breaks to a coop to build an electrical generation facility. We give significant tax break to coops and now we are going to merge all of them together. At some point in time the coops will ask for a tax break from the state to build a plant and now we are going to exempt them. How far should we go? **REPRESENTATIVE STORY** said that **REPRESENTATIVE GOALIE**'s bill is not exclusive to coops. Anyone who wants to build a generator can use that bill. He doesn't believe that a coop building a generator gets into the 3% system, but he is not certain.

REPRESENTATIVE SCHMIDT said she understood **Gary Weins** saying the coops won't be coming back. She asked **Stephen Maly** why they would not be coming back. What would stop them? **Stephen Maly** said coming back is not a fitting description. They've been broke off for quite sometime and wouldn't be returning to a fold that they were never in. They were never in it, so they haven't left it. **SB 390** gave them the option of opening themselves up to competition and participating in the market scenario. The vast majority have declined to opt in, but rather to live with their existing supply contracts most of which come from federal power sources. They are long term contracts and they will expire, but presumably there will be new opportunities down the road to renew them or get new ones from a federal power marketing source. The bill as it sits before the committee does make provisions for new customers coming onto the default supply load. It doesn't spell out in great detail who those customers are. It makes a distinction between large customers and others, but there is some mechanism that allows for adjustments to be made to accept new customers and there is a mechanism where, if it is going to have an affect on prices and supplies for the existing customers, PSC can reject the new load. Coops may become generators to assist and earn money by selling power to a regulated default supplier.

Vote: Motion **AMENDMENT SB024304.ASM** carried unanimously.

REPRESENTATIVE STORY presented amendments (SB024315.ate) to the bill. **EXHIBIT(feh69a03)**

Motion: REP. STORY moved that **AMENDMENTS SB024315.ATE TO SB 243 BE ADOPTED.**

Discussion:

Stephen Maly said he had not had an opportunity to study the amendments that were handed out. He asked the committee to look in their packet and see if they find a set of amendments offered to **REPRESENTATIVE STORY** by Montana Power and Northwestern Corp. **EXHIBIT(feh69a04)** There are explanations on their's for each amendment offered. These are the same amendments as Exhibit 3, prepared by LDS.

REPRESENTATIVE STORY said these current amendments attempt to strip off the four amendments from the Senate in the bill. He went through the amendments with the committee.

REPRESENTATIVE SCHMIDT asked about amendment 8. It says, "allows the PSC to review contracts that do not result from an RFP under a prudence review." What is a "prudence review?" **Stephan Maly** said that is a standard practice in the regulatory world. What is entailed in a prudence review, he believes, differs from case to case. There are some general principles that he is not familiar with that prudence reviews speak to. She referred her question to **Dennis Lopach, NorthWestern Corporation**. He believes the expenses incurred by the public utility would be examined to see if they were reasonable in the circumstances. In traditional regulation the examination tries to put itself in the position of the provider to look at the information the provider had at the time and see if what they did makes sense.

REPRESENTATIVE JUNEAU said she has a question on amendment 8, also. It talks about the RFP being the typical means to procure power. It talks about "peaking contracts" being an example. What are "peaking contracts?" **REPRESENTATIVE STORY** said "peaking contracts" are the ones used to fill up the variations in the load like at 5:00 or early in the morning or when something happens when you have a greater demand than you have contract for. Then you have to go out and find that power. There are a lot of things that could fall into that category. **REPRESENTATIVE JUNEAU** continued. These contracts could be going on all the time. Could there be two or three a week? **REPRESENTATIVE STORY** said they could have two or three a day. They get down to hourly purchases.

REPRESENTATIVE FORRESTER asked if **REPRESENTATIVE MOOD**'s lifeline rates are gone, if the committee passes these amendments, after not accepting **SENATOR JOHNSON**'s amendments? **REPRESENTATIVE STORY** said no, neither one of these bills are law. They are two ideas out in the process. **REPRESENTATIVE MOOD**'s would have to clear the floor and go to the Senate and be dealt with over there. This one has to get out of committee. **REPRESENTATIVE FORRESTER** asked if both of these bills were to pass, would there be a real conflict? **REPRESENTATIVE STORY** said he has not had enough time to study them, to give an answer to that question.

REPRESENTATIVE DELL said that the amendments appear to him to be some effort on the part of utilities to say they'll have more PSC review but not regulation. It appears to be allowing the PSC more of a review and a sense of whether or not this is the best thing for the buck and everything is being done appropriately. Is that accurate? **Stephan Maly** said he believes so. He believes the amendments further articulate and strengthen the cost recovery mechanisms that the utility uses as it goes forth and engages in a risky endeavor. The way that it does that is the way that **REPRESENTATIVE DELL** characterized it. These amendments further underscore that cost recovery is vital and the other side of that is regulatory agency involvement in the process of getting these contracts in place. **REPRESENTATIVE DELL** said he feels good about the amendments. They are speaking to some of his concerns. The PSC will be more actively involved and in a sense, second guessing some of the things that are going on which he believes are worthy of being amended into the bill.

REPRESENTATIVE FORRESTER asked **REPRESENTATIVE MOOD** with these amendments and what the committee has done today, will there be a real conflict between the two bills? **REPRESENTATIVE MOOD** said there would be a problem if both bills passed.

Vote: Motion **AMENDMENTS SB024315.ATE TO SB 243** carried 11-1 with Juneau voting no.

Motion: REP. STORY moved that **SB 243 BE CONCURRED IN AS AMENDED.**

Discussion:

REPRESENTATIVE DEE BROWN said, recognizing all the work that **SENATOR JOHNSON** did on the bill, she is looking at seven pages of amendments that have been gone through. The bill is not in the same form that **SENATOR JOHNSON** presented it to the committee. She feel uncomfortable with seven pages of amendments for a nineteen page bill.

REPRESENTATIVE STORY said if they remember the hearing and all that followed over in the Senate, the bill had many more pages of amendments presented for it in the Senate and some of them were attached, removed, and re-attached in the Senate. The bill went through a lot of forms before it reached the committee. In the end **SENATOR JOHNSON** decided he didn't like any of it and wanted to go back to his original idea. This committee decided not to take his suggestion and put some amendments on it. This bill is a different concept and he believes **REPRESENTATIVE MOOD's** bill is a concept that needs to be looked at also. He doesn't know which bill is the best. We need to keep both of them moving.

Motion/Vote: **REP. ROY BROWN** moved that **SB 243 AS AMENDED BE TABLED**. Motion failed 3-9 with Brown, Forrester, and Juneau voting aye.

Motion: **REP. SCHMIDT** moved that **SB 243 BE CONCURRED IN AS AMENDED**.

Discussion:

REPRESENTATIVE MOOD said that **SENATOR JOHNSON** is trying to do the same thing that his bill is trying to do but it comes at it from a different angle. He feels that they need to pass the bill out of committee and get it on the floor. There are a number of approaches that we need to keep alive.

Vote: Motion **SB 243 AS AMENDED** carried 11-1 with Juneau voting no.

REPRESENTATIVE STORY will carry the bill on the floor.

EXECUTIVE ACTION ON SJ 14

Motion: REP. MOOD moved that SJ 14 BE ADOPTED.

Discussion:

REPRESENTATIVE STORY said it is an interesting thought but he is not ready to go where this resolution goes. He doesn't like to mandate to people to participate in community and public service. He has faith that people will do that because they desire to do it, not because they are required to do it. In a free society he doesn't believe the legislature should mandate this kind of service.

REPRESENTATIVE DEE BROWN said she agrees with **REPRESENTATIVE STORY**. She believes in the military and she believes in service, but to say it is a high priority for her to legislate it, would not be true.

REPRESENTATIVE MC KENNEY also agrees with the sentiments that have been spoken. Military activity can be a dangerous job and those involved need to depend on everyone else there. Bad attitudes could cause a dangerous situation to be worse. He is opposed to the resolution.

Vote: Motion SJ 14 failed 3-9 with Forrester, Matthews, and Schmidt voting aye.

Motion: REP. MOOD moved to REVERSE THE VOTE ON SJ 14 and that it BE TABLED.

HOUSE COMMITTEE ON FEDERAL RELATIONS, ENERGY, AND
TELECOMMUNICATIONS

March 27, 2001

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ADJOURNMENT

Adjournment: 4:40 P.M.

REP. AUBYN A. CURTISS, Chairman

NINA ROATCH, Secretary

AC/NR

EXHIBIT (feh69aad)